

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
SAN FRANCISCO DIVISION OF JUDGES**

**POMONA VALLEY HOSPITAL  
MEDICAL CENTER (Respondent)**

**And**

**Case No. 21–CA–190102**

**SERVICE EMPLOYEES INTERNATIONAL  
UNION—UNITED HEALTHCARE WORKERS  
--WEST (Charging Party)**

*Brian Lopez, Esq., and  
Lindsay R. Parker, Esq.,  
for the General Counsel.  
Michael R. Goldstein, Esq. (Musick, Peeler & Garrett),  
for the Respondent.  
Bruce Harland, Esq. (Weinberg, Roger & Rosenfeld),  
for Charging Party.*

**DECISION**

STATEMENT OF THE CASE

**LISA D. THOMPSON, Administrative Law Judge.** This case was tried before me in Los Angeles, California, on July 24, 2017. A consolidated complaint issued on April 25, 2017, but one component (Case No. 21–CA–189971, dealing with paragraphs 1(a), 6 and 8 of the complaint), was resolved by an informal settlement prior to the trial.<sup>1</sup> The remainder of the complaint (Case No. 21–CA–190102) alleges that Respondent violated Section 8(a)(1) of the Act when Supervisor Tony Torres interrogated an employee and implied that she might not get promoted because of her union activity. Respondent filed an answer denying the essential allegations in the complaint.

After the trial, the General Counsel and Respondent filed post hearing briefs, which I have read and considered. Based on those briefs and the entire record, including the testimony of the witnesses and my observation of their demeanor, I make the following:

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<sup>1</sup> GC Exh. 1(o). Abbreviations used in this decision are as follows: “Tr.” for the Transcript, “GC Exh.” for the General Counsel’s exhibits, and “R. Exh.” for Respondent’s Exhibits. Specific citations to the transcript and exhibits are included where appropriate to aid review, and are not necessarily exclusive or exhaustive.

## FINDINGS OF FACT

## I. JURISDICTION

Respondent, a California corporation located in Pomona, California, is engaged in the operation of a hospital and health care facility at that location. In a representative one-year period, Respondent derived gross revenues in excess of \$250,000 and purchased and received, at its Pomona facility, goods valued in excess of \$50,000 directly from points outside of California. Accordingly, I find, as Respondent admits, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and a health care institution within the meaning of Section 2(14) of the Act.

I also find, as Respondent admits, that the Charging Party Union (hereafter, the Union) is a labor organization within the meaning of Section 2(5) of the Act.

## II. ALLEGED UNFAIR LABOR PRACTICES

## Background

Respondent operates a fairly large-sized acute care hospital located at 1798 Garey Avenue, Pomona, California. The main hospital campus is a series of four connected buildings: The first is a four-story tower; the second is a six-story tower; the third is a three-story tower; and the fourth is another three-story tower that houses the Women's Center.<sup>2</sup>

The Union began an organizing campaign among the service and technical employees at the Respondent's hospital in late 2015. After obtaining sufficient support from the employees, the Union filed an election petition with the Board on December 22, 2015. The representation case thus initiated is recorded as 21–RC–166499.<sup>3</sup>

The election took place on January 21 and 22, 2016, at the Pitzer Auditorium in Pomona. The Union won the election by a vote of 531 to 458, with 218 challenged ballots that were sufficient to affect the election results.<sup>4</sup> A hearing was ordered and held regarding the eligibility of the employees whose ballots were challenged. A Board Hearing Officer issued a lengthy report recommending that some challenges should be sustained and others overruled. Respondent filed exceptions to the report that were considered by the Regional Director, who issued a 12-page decision, ordering that 82 ballots, sufficient in number to affect the election results, be opened and counted.<sup>5</sup> Both parties requested that the Board review the Regional Director's decision and the matter remains pending with the Board.<sup>6</sup>

While the representation proceeding was being litigated, and to date, the Union continued its contact with the unit employees. It distributed union buttons to the employees, which many

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<sup>2</sup> GC Exh. 5 at 12.

<sup>3</sup> Tr. 21–22; GC. Exhs. 2–3.

<sup>4</sup> GC Exhs. 3–4.

<sup>5</sup> GC Exh. 5–6.

<sup>6</sup> Tr. 12.

wore while at work.<sup>7</sup> According to Union Representative Brian Valdez, the contacts with employees included phone calls, meetings in the hospital cafeteria, and special events.<sup>8</sup>

One of the Union's special events was a public rally on October 19, 2016, that was advertised in advance by fliers distributed by the Union and covered extensively by the News media.<sup>9</sup> The rally took place across the street from the hospital.<sup>10</sup> Many employees and some public figures were present at the rally. Some of Respondent's managers and supervisors either were present at the rally or observed it. Supervisor Tony Torres observed what was happening at the rally.<sup>11</sup>

### The Alleged Coercive Interrogation

Christina Lupercio (Lupercio or the Charging Party) began work for Respondent on August 23, 2016 as an EVS Associate A1. On April 2, 2017, she was promoted to an EVS Associate, A3.<sup>12</sup> Both positions involve cleaning and disinfecting areas of the hospital, but the A3 works primarily in the surgery departments.<sup>13</sup> As an A1, Lupercio was a part-time, on-call employee with no benefits; as an A3, her present position, she is a regular part-time, on-call employee with partial benefits and higher pay. In her present position, Lupercio works varied hours, but sometimes works full-time hours.<sup>14</sup> Her supervisor as an A1 was Tony Torres (Torres), who had interviewed and hired her into her first position with the hospital.<sup>15</sup> Her supervisor as an A3 is Sherry Cisneros (Cisneros).<sup>16</sup>

Although she was not employed at the time of the Board election, Lupercio thereafter became active on behalf of the Union, including by attending meetings. She began wearing a union button on her uniform in October 2016.<sup>17</sup> She openly wore the button and did not hide the fact that she supported the Union.<sup>18</sup>

In mid-October 2016, according to Lupercio, Torres approached her near an elevator in the basement of the hospital. Lupercio had been taking her break in an employee lounge near the elevator. The lounge is also used for employee meetings conducted by Supervisor Torres.

After an innocuous opening exchange between them, again according to Lupercio, Torres told her that some people had noticed she was wearing a union button and he asked whether Lupercio was in fact for the Union. Lupercio, who was wearing her union button, responded and

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<sup>7</sup> Tr. 23–25, GC Exh. 7.

<sup>8</sup> Tr. 22–23.

<sup>9</sup> Tr. 25–33; GC Exhs. 8–10.

<sup>10</sup> Tr. 31–32.

<sup>11</sup> Tr. 72, 82–86.

<sup>12</sup> Tr. 39–40.

<sup>13</sup> Tr. 63.

<sup>14</sup> Tr. 41, 49–50, 52–53.

<sup>15</sup> Tr. 41, 48.

<sup>16</sup> Tr. 52–58.

<sup>17</sup> Tr. 43.

<sup>18</sup> Tr. 51.

asked Torres if he was for the Union. Torres replied that it was “a give and take.”<sup>19</sup> According to Lupercio, Torres explained that he asked Lupercio the question because he would not want Lupercio “not to get promoted to full time or a relief lead” because she was wearing a union button.<sup>20</sup> According to Lupercio, no one else was present. Lupercio testified that she did not tell other employees about the conversation, and she did not mention it to her union representative until about a week later.<sup>21</sup> The charge dealing with the conversation was not filed until December 16.<sup>22</sup>

Significantly, after the conversation, Lupercio was promoted to her present A3 position, which, according to Lupercio, Torres approved. Lupercio also testified that she later applied for other positions outside the EVS department that she was denied; but she conceded she did not know if Torres had any role in those denials. Tr. 50–51.

Torres, who has worked for Respondent since 2015, adamantly denied having had the conversation attributed to him by Lupercio. He specifically denied interrogating or threatening Lupercio as she testified. He confirmed that he agreed to Lupercio’s transfer to the A3 position, but had no role in the denials of her applications for new positions outside the EVS department. He testified that he observed Lupercio wearing a union button at work and assumed therefore that she was “pro-Union.”<sup>23</sup> He also volunteered that Lupercio was a “great associate.”<sup>24</sup> Torres also testified that he was not concerned about union activity and thought that employees had the right to decide for themselves whether to support the Union. He further testified that, although some employees approached him about the Union, he did not follow up and express his views or talk about the matter.<sup>25</sup>

### III. ANALYSIS AND CREDIBILITY RESOLUTION

The above presents a stark one-on-one credibility determination. Although both Torres and Lupercio testified in a direct and straightforward manner, I credit Torres over Lupercio for several reasons. First and foremost, I note that, after the alleged conversation between Lupercio and Torres, Lupercio was in fact promoted to an EVS position with better pay and benefits, for which Torres was at least partially responsible. This blunts the notion that Torres would have previously threatened Lupercio that continuing to wear a union button would work against promotions for her. Nor is there anything in the record that would show why Lupercio was denied other positions outside the EVA department and it is clear that Torres had nothing to do with those denials.

Moreover, I also find it significant that Lupercio did not relate the alleged threat to her fellow employees; she appeared to be a feisty person, who, according to her testimony, countered Torres’s question about whether she was pro-union with one of her own, asking her supervisor if he was for the Union. It seems unlikely that, if indeed such a threat were made, Lupercio would

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<sup>19</sup> Tr. 44.

<sup>20</sup> Tr. 44–46, 53–56.

<sup>21</sup> Tr. 57.

<sup>22</sup> GC Exh. 1(d).

<sup>23</sup> Tr. 64.

<sup>24</sup> Tr. 65.

<sup>25</sup> Tr. 71–72, 81–82.

not have told fellow employees about it and waited a week, according to her testimony, to mention it to a representative of the Union. Union Representative Valdez testified that the Union's contacts with employees were "daily."<sup>26</sup> Thus, the fact that Lupercio never mentioned anything to her coworkers and delayed in telling her union representative about the alleged conversation struck me as suspicious and made her testimony and version of events unreliable.

Finally, I found Torres perfectly credible when he testified that he did not care about the union views of employees, including Lupercio. There are no other allegations that Torres threatened or interrogated employees, many of whom, like Lupercio, wore union buttons at work. He was careful not to talk about the Union even when employees approached him with questions. There is thus no plausible reason why Torres would have singled out Lupercio for coercive statements about wearing a union button. Accordingly, I find that the conversation related by Lupercio never happened and Torres did not interrogate or threaten Lupercio.

### CONCLUSIONS OF LAW

The General Counsel has failed to show by a preponderance of the evidence that Respondent violated Section 8(a)(1) of the Act as alleged in the complaint.

On these findings of fact and conclusions of law, and on the entire record, I issue the following recommended<sup>27</sup>

### ORDER

The complaint is dismissed in its entirety.

Dated at Washington, D.C., October 23, 2017.



Lisa D. Thompson  
Administrative Law Judge

<sup>26</sup> Tr. 22.

<sup>27</sup> If no exceptions are filed as provided in Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be waived for all purposes.